

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(Amendment)**

**704 KAR 19:002. Alternative education programs.**

RELATES TO: KRS 156.070, 156.160, 160.380

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 grants the Kentucky Board of Education the authority over the management and control of programs operated in the common schools. KRS 156.160 grants the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of alternative education programs in school districts.

Section 1. Definitions. (1) "Alternative education program" is defined by KRS 160.380(1)(b)~~[(a)]~~.

(2) "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in the definitions in 707 KAR 1:002 for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(3) "Individual education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 707 KAR 1:320.

(4) "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades six (6) through twelve (12) to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(5) "Individual learning plan addendum" or "ILPA" means an action plan that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program that includes~~[, as appropriate,]~~ academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative education program.

(6) "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel:

(a)1. To ensure the safety of the individual student, the student body, or staff;

2. To meet the educational needs of the student;

3. To transition the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or

4. For disciplinary purposes; and

(b) Not made at the request of the parent or emancipated student.

(7) "A1 school" is defined by 703 KAR 5:240(1)(1).

(8) "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within ~~[the student's assigned school]~~ an existing A1 school.

~~(9) [(8)]~~ "On-site program" means an alternative education program located within ~~[the student's assigned school]~~ an existing A1 school.

~~(10)~~~~(9)~~ "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

(11) "Long term placement" means a student enrolled in an alternative education program for more than ten school days.

Section 2. General Requirements. (1)(a) A district shall ensure that each alternative education program is not limited in scope or design and is aligned to the academic program of the district.~~;~~

~~1. Aligns with college and career readiness outcomes;~~  
~~2. Is not limited in scope or design; and~~  
~~3. Includes training to build capacity of staff and administrators to deliver high-quality services and programming that conform with best practices and guide all students to college and career readiness.]~~

(b) A student enrolled in an alternative education program may be eligible to participate in one (1) or more types of programs to address student learning needs that may include an alternative digital learning environment, credit recovery, or an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each alternative education program within the district. Locally-adopted policies and procedures shall include the:

(a) Purpose of the program, including the ways the program supports the district's college and career readiness goals for students;

(b) Eligibility criteria, as appropriate;

(c) Process for entering students into the program;

(d) Process for transitioning students out of the program;

(e) Process for developing the ILPA for students with long term placements, including the composition of the team to develop the ILPA, which shall include an invitation to the [parents] guardian to participate and, as appropriate, an invitation to the student to participate; [and]

(f) Procedures for collaboration with outside agencies involved with involuntary placements, including courts or other social service agencies to address student transitions between programs;~~;~~

(g) Procedures for regular, periodic monitoring of the alternative education program by the district; and

(h) Procedures for selecting, implementing, and monitoring the impact of professional learning designed to meet the needs of the teachers and students served by the alternative education program.

(3) An alternative education program shall be either an on-site program or an off-site program.

(4) Alternative education program curriculum shall be aligned with the Kentucky ~~[Core]~~ Academic Standards established in 704 KAR 3:303 and 704 KAR Chapter 8, and the student learning goals in the ILP.

(5) Each alternative education program student shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(6) An alternative education program shall be subject to any applicable requirements of Kentucky's Consolidated State Plan~~[703 KAR 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver]~~, or its successor.

(7) Each student participating in an alternative education program shall be eligible to access extracurricular activities as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(8) Each student participating in an alternative education program shall continue to be able to access resources and services already available in the district, including instructional materials, tutoring, intervention, transportation, library and media services, specialty course work, and counseling services, in furtherance of each student's educational program as determined through the development of the ILPA.

Section 3. Placement of Students. (1)(a) The placement of students by the district in an alternative education program shall be either voluntary or involuntary.

(b) A student entering an alternative education program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(c) The district shall ensure that an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative education program.

(2)(a) The placement decision for all students with an IEP shall be made through the admissions and release committee (ARC) process pursuant to 707 KAR 1:320.

(b) For a child with a disability, the IEP shall address the changed educational delivery needs of the student based upon entry into or exit from an alternative education program.

(c) The placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

Section 4. Costs and Expenditures. Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative education program operating in the district.

Section 5. Data. (1) Each district shall utilize the student information system to enter data regarding each student enrolled in an alternative education program.

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student participation, educational programming, achievement, and transition to and from alternative education programs.

(3) Districts are responsible for ensuring that student records are maintained and recorded in the student information system for each student in an alternative education program regardless of whether services are provided by district staff or non-district staff.

Section 6. Personnel. Alternative education program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020 School districts[, and] shall comply with the classified and certified assignment restrictions established in KRS 160.380(3) when operating alternative education programs.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Commissioner of Education  
LU YOUNG, Chair

APPROVED BY AGENCY: December 6, 2021

FILED WITH LRC: December 7, 2021

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on February 22, 2022 at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 160.380 defines an alternative education program as “a program that exists to meet the needs of students that cannot be addressed in a traditional classroom setting but through the assignment of students to alternative classrooms, centers, or campuses that are designed to remediate academic performance, improve behavior, or provide an enhanced learning experience. Alternative education programs do not include career or technical centers or departments.” This regulation supports the districts in the operation of alternative education programs by creating standard definitions, outlining requirements for district level policies, providing foundational entry criteria, and establishing data collection requirements.

(b) The necessity of this administrative regulation: This regulation ensures that students across the Commonwealth have access to alternative education programs and that those programs are governed following the same set of foundational principles.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070, 156.160.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the foundational requirements for the operation of alternative education programs. Districts use this regulation as a starting point when crafting their own local policies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: These amendments seek to provide clarity and uniformity to alternative education programs. The definitions section has been updated to clarify the definition of an on-site versus off-site program and to create a uniform definition of a long term placement. Additionally, the amendment creates a new requirement for additional procedures within district level policies that encourage greater monitoring and interaction between district level staff and alternative education program staff. Finally, the amendment clarifies the expectation that districts ensure that partnering organizations are providing appropriate data for inclusion in the student information system.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to resolve frequent issues identified through the comprehensive monitoring processes deployed by the Kentucky Department of Education. Collectively, these amendments address roughly eighty percent of monitoring findings over the past five years.

(c) How the amendment conforms to the content of the authorizing statute: KRS 160.380 defines the alternative education program. The Kentucky Board of Education promulgated this regulation under the authority granted by KRS 156.070 and 156.160.

(d) How the amendment will assist in the effective administration of the statutes: These amendments seek to resolve frequent findings from KDE's consolidated monitoring process. Each amendment is the direct result of audit findings and will help to provide clarity for districts seeking to run alternative education programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by the amendments made in this regulation include: All public school districts and alternative education programs. Additionally, this regulation impacts Department of Juvenile Justice facilities that are categorized as alternative education programs and facilities run by the Kentucky Educational Collaborative for State Agency Children (KECSAC).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: School districts housing alternative education programs will be required to create two new procedures within policies related to the periodic local monitoring of alternative education programs and the selection of professional learning for teachers working in alternative education programs. The alterations to definitions may require school districts to amend existing policies or practices to align with the changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost to districts as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with the amended regulation will ensure that students assigned to alternative education programs have equal access to quality teachers and rigorous coursework. Additionally, the changes will provide greater uniformity in data collection and reporting that will allow the KDE to better support alternative education programs in the future.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: KDE will incur initial training costs to update alternative education providers on the new requirements.

(b) On a continuing basis: KDE incurs an ongoing cost of staff and resources that are already in place.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation is funded by the KDE General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies, the Kentucky Department of Education (KDE), the Kentucky Department of Juvenile Justice (DJJ), and the Kentucky Educational Collaborative for State Agency Children (KECSAC) will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.160

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. KDE will incur initial training costs to update alternative education providers on the new requirements.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? KDE will incur initial training costs to update alternative education providers on the new requirements.

(d) How much will it cost to administer this program for subsequent years? KDE incurs an ongoing cost of staff and resources that are already in place.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A